

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 460.00: TRANSFER PROCEDURES FOR THE MASSACHUSETTS TREATMENT CENTER

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460.01: Purpose

The purpose of 103 CMR 460.00 is to establish rules and procedures governing the transfer of sexually dangerous persons who have also been sentenced for a criminal offense and whose sentences have not expired between the Massachusetts Treatment Center and other correctional institutions of the Department of Correction.

460.02: Statutory Authorization

103 CMR 460.00 is issued pursuant to M.G.L. c. 123A, §§ 2 and 2A; M.G.L. c. 124, § 1 (b), (c), (f) and (g); and M.G.L. c. 127, §§ 20, 49A, 97 and 97A.

460.03: Cancellation

103 CMR 460.00 cancels all previous institution policy statements, bulletins, directives, orders, notices, rules and regulations regarding transfer which are inconsistent with this policy.

460.04: Applicability

103 CMR 460.00 applies to all Department employees and to all inmates at state, county and federal correctional institutions who are serving a sentence imposed by the Commonwealth of Massachusetts and to residents housed at the Treatment Center located in Bridgewater, Massachusetts who have not completed serving all of the time remaining of a criminal sentence.

460.05: Access to Policy

103 CMR 460.00 shall be maintained within the Central Policy File of the Department of

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Classification Board - A committee of institutional or departmental employees which makes recommendations to the superintendent concerning an inmate's program participation or placement within the Department of Correction.

Clinical Director of Treatment - The Treatment Center staff person responsible for the development, implementation and review of the clinical components at the Massachusetts Treatment Center.

Commissioner - Commissioner of Correction.

Community Access Board (CAB) - A board established pursuant to M.G.L. c. 123A, § 6A and consisting of five members appointed by the Commissioner, whose function is to consider a person's placement within a community access program and conduct an annual review of Treatment Center residents' sexual dangerousness.

Correctional Institution - A state, county or contract correctional facility located within Massachusetts.

Department - The Department of Correction

Director of Classification - The Superintendent's designee who is responsible for overseeing and coordinating the classification and transfer board processes at the Treatment Center.

Emergency - A threat to the safety, security or orderly administration of the Treatment Center or to the safety or security of staff, residents, or other persons.

Resident - A person committed to the Treatment Center pursuant to M.G.L. c. 123A as a Sexually Dangerous Person.

Sexually Dangerous Person - As defined in M.G.L. c. 123A, § 1: "Any person previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires."

Superintendent - The chief administrative officer of the Treatment Center.

Transfer - The act of moving a Treatment Center resident from the Treatment Center to another correctional facility within Massachusetts upon approval of the Commissioner or his designee.

Transfer Board - The board established pursuant to M.G.L. c. 123A, § 2A whose function is to make recommendations for the transfer of a Treatment Center resident from the Treatment Center to another correctional institution designated by the Commissioner.

Treatment Center - As created by M.G.L. c. 123A, § 2 the correctional institution for the care, custody, treatment, and rehabilitation of persons adjudicated as being sexually dangerous.

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For the purposes of 103 CMR 460.07(1), the criteria pertaining to treatment failure will be met if in the judgment of the Clinical Director of Treatment the resident has failed appreciably to participate in treatment or to achieve treatment goals during the previous six month period.

For the purposes of 103 CMR 460.07, "treatment" will be defined as that portion of the sex offender treatment program provided at the Treatment Center which is specified for the resident in his six-month written treatment plan.

(2) Transfer for Reasons of Safety and Security. The resident may be transferred based upon the following criteria:

- (a) the danger posed by the resident to other residents or staff at the Treatment Center; or
- (b) the degree of security necessary to protect the public.

For the purposes of 103 CMR 460.07(2), criteria pertaining to safety and security must be based upon evidence that the resident poses a threat of serious physical harm to himself or others, manifested by:

- 1. an assault or assaults involving physical injury to staff or other residents; or
- 2. repeated threats of assault; or
- 3. escape, attempted escape or posing a serious risk of escape.

(3) Voluntary Transfer. The resident may be transferred upon his own written request addressed to the Clinical Director of Treatment, only if:

- (a) the resident also meets the criteria set forth in 103 CMR 460.07(1) or (2); or
- (b) the resident is otherwise eligible and suitable for classification to a correctional institution where sex offender treatment is offered, and the Clinical Director of Treatment has determined that no reasonable purpose would be served at the time by his continued residency at the Treatment Center.

### 460.08: Transfer Board Process

(1) Applicability - Only Treatment Center residents who are civilly committed to the Treatment Center who have also been sentenced for a criminal offense and whose sentences have not expired, may be referred to the transfer board for consideration of possible transfer.

(2) Referral - The Superintendent, the Clinical Director of Treatment, the Community Access Board, or the Behavior Review Committee may refer the resident to the transfer board to make recommendations regarding the transfer of a resident from the Treatment Center to another correctional institution. All referrals to the transfer board shall be in writing on a form approved by the Superintendent. The written referral shall include a statement explaining the factual basis and reason justifying the referral. A copy of the written referral shall be provided to the resident within 48 hours from the referral is signed by the referring party. A resident may be referred to the transfer board upon a reasonable belief that he meets the transfer criteria as set forth in 103 CMR 460.07.

(3) Initial Transfer Board Hearing - Upon referral of a resident to the transfer board, the transfer board shall convene to make a recommendation concerning a Treatment Center resident's transfer from the Treatment Center to another correctional institution. The following standards shall be adhered to regarding the initial transfer board hearing:

- (a) Board Composition - The transfer board shall be comprised of the Deputy Superintendent for Programs or a designee, the Clinical Director of Treatment or a designee

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The members of the transfer board should be impartial. For example, a witness to an event that forms the basis for the referral to the transfer board should not sit as a transfer board member. Prior to a hearing, a resident may challenge the impartiality of a board member. If the resident challenges the impartiality of a board member, the board Chairperson or a designee shall determine if the resident has stated substantial reasons to support the claim. If a board member is removed by the Chairperson or a designee, the Superintendent shall designate a replacement as soon as possible. In the event that the Director of Classification or Acting Director of Classification is replaced, the Superintendent will designate another senior staff member as replacement.

(b) Notice of Hearing - The Treatment Center resident shall be provided with at least 30 days advance written notice prior to his transfer board hearing. The notice will state with specificity the grounds upon which a proposed transfer is based. Such notice may be waived by the resident in writing. The written notice shall also inform the resident of the purpose of the hearing, the reasons for the hearing, the procedures to be followed at the hearing, and a listing of the date, time, and place of the hearing. Within ten days of the hearing date, the resident shall be provided with the names of any witnesses to appear before the transfer board and copies of documents to be considered by the transfer board or a list of such documents if the documents are otherwise available to the resident (*e.g.* the resident's Treatment Center record). Within one day of the hearing date, the resident shall be provided a list of the board members who will preside over the hearing.

(c) Representation - The resident may be represented by an attorney or law student at the hearing. It is the resident's responsibility to secure such representation and the Department shall afford him the opportunity to do so. The Department shall reschedule the hearing once at the request of the attorney or law student. The Department may, but is under no obligation to, reschedule a hearing a second time to accommodate the legal representative's schedule. The resident may be represented by another resident under the following circumstances:

1. The resident demonstrates that he has made reasonable efforts to secure representation by an attorney or law student and that he has been unable to secure such representation; and
2. The proposed resident advocate holds a privilege level above the lowest privilege level; and
3. The transfer board determines, after consultation with appropriate clinical staff, that there would be no clinical contraindications to permitting the proposed resident advocate access to any records to be considered by the transfer board; and
4. The transfer board determines, after consultation with appropriate security staff, that there are no security concerns that would preclude appointment of the proposed resident advocate;
5. The resident advocate shall not receive compensation in any form for such services; and
6. The resident advocate shall conduct himself in a manner consistent with standards of decorum commonly observed in the courts of the Commonwealth. If the resident fails to conduct himself in such manner during the course of his representation, the transfer board Chairperson may disqualify him from continuing the representation.

(d) Request for Witnesses and Evidence - At least ten days before the hearing date, the resident shall make a written request to the Chairperson for any witnesses or any evidence which the resident wishes to present on his own behalf. The request shall include a brief summary of the expected testimony of any proposed witness. The Chairperson may rule on the resident's request either prior to the hearing or at the hearing. The Chairperson shall allow

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5. Failure of the resident to provide a brief summary of the expected testimony of a proposed witness.
- (e) Case Presentation - The party referring the resident to the transfer board may make an oral and/or written presentation to the transfer board relevant to the applicable criteria for transfer set forth in 103 CMR 460.07. The referring party may designate another Treatment Center staff member to make the written and/or oral presentations. If the BRC or the CAB is the referring party, the Chairperson of the referring party may designate a member of the referring body to make the oral and/or written presentations.
- (f) Cross-Examination - Subject to the criteria set forth in 103 CMR 460.08(3)(d), the resident or his representative shall be afforded the opportunity to cross-examine any witnesses appearing before the transfer board.
- (g) Resident Presentation - Following the referring party's presentation, the Treatment Center resident scheduled for review may present any information relevant to the question of the resident's transfer. Transfer board members may direct questions to the resident. A resident's silence may be used to draw an adverse inference against him, but his silence shall not be the sole basis of a determination to recommend transfer. If a legal representative is present, s/he will be allowed to make a presentation to the transfer board members for their consideration. In the event the resident is unwilling to attend the transfer board hearing, the Chairperson of the board may proceed with the hearing.
- (h) Transfer Board Decision - The board shall base its determination upon evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. After the case and resident presentations to the transfer board, the Chairperson shall direct the resident, and his legal representative if present, to leave the hearing room so that the board may deliberate and vote. Each board member, including the Chairperson, shall have one equal vote. The board's decision shall be determined by a majority vote no later than 48 hours following the case and resident presentations. After the board votes, the chairperson of the board or a designee shall orally notify the resident of the board's decision. The board may take the following actions:
  1. The board may determine that the resident should not be transferred from the Treatment Center. In such case, the determination of the board shall be final. The board shall issue a written decision, as set forth in 103 CMR 460.08(3)(g)3. Nothing, however, shall preclude a subsequent referral of the resident to the transfer board, based upon the criteria set forth in 103 CMR 460.07.
  2. The board may delay its recommendation concerning the resident's transfer to another correctional facility. If the board delays its recommendation, the members of the board considering the resident's case shall set a date to reconvene. The date may not be longer than six months from the date of the initial transfer board hearing. The resident shall be notified orally of this date following the board's vote. At that date, the same board members shall reconvene to make a recommendation regarding the resident's transfer. The board may not delay its recommendation a second time. The reconvened hearing shall proceed in accordance with 103 CMR 460.08(3)(c) through (e) and 103 CMR 460.08(3)(f) through (k).
  3. The board may recommend the resident's transfer to another correctional facility if it finds that the criteria set forth in 103 CMR 460.07 have been met by a preponderance of the evidence. The board's recommendation, and reasons for a minority vote shall be recorded in the Chairperson's written summary report.
- (i) The Transfer Board Summary - If at the end of the transfer board hearing, the board recommends the resident's transfer to another correctional institution, a written summary of

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3. The minimum conditions and criteria for consideration of the resident's future return to the Treatment Center; and
  4. The reasons for a minority vote, if there was one; and
  5. A recommendation as to the appropriate classification and placement of the resident within the Department of Correction.
- (j) Superintendent's Review - If the transfer board recommends the resident's transfer to another correctional facility, the transfer board Chairperson shall submit to the Superintendent copies of the transfer board's written summary of the board's recommendation for transfer, classification and placement, and all accompanying documentation, as set forth in 103 CMR 460.08(3)(i). If the Superintendent referred the resident to the transfer board pursuant to 103 CMR 460.08(2), the Superintendent shall designate an impartial Treatment Center staff member to review the transfer board's recommendation. Within ten working days after receipt of the transfer board's recommendation concerning the resident's transfer, the Superintendent or a designee shall render a written decision concerning the resident's transfer, classification and placement.
- (k) Resident Appeal - Where a Treatment Center resident disagrees with any recommendation of the transfer board, the resident may submit a written appeal of the transfer board's recommendation to the Superintendent within five working days of written notification of the board's recommendation. If the Superintendent referred the resident to the transfer board pursuant to 103 CMR 460.08(2), the Superintendent shall designate an impartial Treatment Center staff member to review the resident's appeal.
- The Superintendent or a designee shall respond in writing to the resident within ten working days, noting the result of the appeal. This response may be included in the Superintendent's written decision described in 103 CMR 460.08(3)(h).
- (l) The Commissioner's Decision - To finalize the transfer process, the Superintendent's decision concerning the resident's transfer, classification and placement shall be submitted for approval to the Commissioner or a designee.
- (m) Emergency Transfers.
1. Whenever a resident is referred to the transfer board for reasons set forth in 103 CMR 460.07(2) (transfer for reason of safety and security), the Superintendent or, if the Superintendent is not available, a designee may transfer a resident to another correctional institution prior to the resident's transfer board hearing if the Superintendent makes the written determination that the resident:
    - a. poses an imminent threat of serious physical harm to other residents or staff, or poses an imminent threat of escape, or needs to be transferred for his own safety, and
    - b. that reasons of security or considerations pertinent to an ongoing investigation preclude the resident's housing in any unit of the Treatment Center pending the transfer board hearing.
  2. A transfer board hearing shall be held within 20 working days of such an emergency transfer. However, where a BRC investigation hearing or any investigation is pending, the transfer board hearing shall initially consist only of the resident's security requirements; specifically whether or not he continues to require residency outside of the Treatment Center. Within ten working days of completion of the BRC hearing and/or compilation of any investigation, a full hearing shall be held in accordance with the procedure set forth in 103 CMR 420.08(3)(a) through (l). At the discretion of the Superintendent, the hearing can be held either at the Treatment Center or at the site of the resident's confinement.

460.09: Subsequent Transfer Board Hearings

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(2) The Treatment Center Superintendent, Treatment Center Clinical Director of Treatment, the CAB, or a classification board may refer any transferred Treatment Center resident to the transfer board to determine whether the transferred resident should be recommended to be returned to the Treatment Center. Such a review shall be conducted in accordance with 103 CMR 460.08(3)(a) through (l).

(3) Once every six months any transferred Treatment Center resident may submit a written request for review by the transfer board. The resident shall present the request in writing to the Treatment Center Superintendent who shall refer the transferred resident's request to the transfer board Chairperson. The resident shall bear the burden of submitting sufficient information to show that he has complied with the criteria and conditions established by the transfer board pursuant to 103 CMR 460.08(3)(h). Upon determination by the transfer board that the resident has met his burden of submission, the transfer board process shall proceed in accordance with 103 CMR 460.08(3)(a) through (l). The Chairperson, in his or her discretion, may convene the transfer board either at the Treatment Center or at the correctional institution where the resident resides.

### 460.10: Tracking of Transferred Treatment Center Residents

In order to facilitate the centralized control, monitoring and evaluation of transferred Treatment Center residents, the Department shall develop, institute, and maintain a record keeping system at the Treatment Center that will record each correctional institution at which a transferred Treatment Center resident resides. These records will be kept for the following purposes:

(1) The Treatment Center Superintendent or a designee shall endeavor to obtain from each correctional institution to which a transferred Treatment Center resident is transferred copies of any records or documents relevant to such a resident's sexual dangerousness, treatment, rehabilitation, disciplinary actions, and security concerns. The Treatment Center Superintendent or his/her designee shall endeavor to include such records in a transferred resident's treatment and administrative files maintained at the Treatment Center.

(2) The Treatment Center's Clinical Director of Treatment or a designee shall conduct annual reviews of all transferred Treatment Center residents. Such reviews may include but are not limited to interviews of the resident, review of the resident's records from other correctional institutions, and interviews with the staff of other correctional institutions. Any reports of such periodic reviews shall be included in the transferred resident's Treatment Center files and records.

(3) Pursuant to M.G.L. c. 123A, §§ 2A & 6A, the Community Access Board ("CAB") shall continue to conduct annual reviews of and prepare reports on the current sexual dangerousness of all transferred residents. The CAB may also conduct a review in order to update an annual review in preparation for a transferred resident's M.G.L. c. 123A, § 9 hearing. Reviews may include but are not limited to personal interviews of the resident, interviews with the staff of other correctional institutions, and to all of the resident's records at the Treatment Center and any other correctional institution.

### 460.11: Return of Transferred Residents to the Treatment Center

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### 460.12: Time Limits

All procedural time limits set forth in 103 CMR 460.00 are directory and may be waived by the Superintendent or the Commissioner or their designees.

### 460.13: Status of Transferred Residents

Any resident transferred pursuant to 103 CMR 460.00 from the Treatment Center to another correctional institution of the Department of Correction shall be deemed a state prisoner fully subject to all Department rules, regulations and policies governing prisoners at the receiving correctional institution, including, but not limited to, 103 CMR 420.00 and 103 CMR 430.00. Except as provided in 103 CMR 460.00, rules, regulations and policies adopted solely for operation within the Treatment Center shall not apply to transferred residents.

### 460.14: Emergency

Whenever in the opinion of the Commissioner or a designee or the Superintendent of any state correctional institution, an emergency exists which requires suspension of all or part of 103 CMR 460.00, the Commissioner or a designee or the Superintendent of any state correctional institution may authorize such suspension provided that any suspension lasting more than 48 hours must be approved by the Commissioner.

### 460.15: Responsible Staff

The Associate Commissioner of Programs and Treatment shall be responsible for monitoring this policy throughout the Department. The Superintendent of each correctional institution shall be responsible for the implementation of this policy within the institution and for the development of any and all necessary and appropriate policies and procedures within the parameter of 103 CMR 460.00.

### 460.16: Annual Review Date

103 CMR 460.00 shall be reviewed annually from the effective date by the Associate Commissioner of Programs and Treatment. The party or parties conducting the review shall submit a memorandum to the Commissioner with a copy to the Central Policy File, indicating that review has been completed. Recommendations for revisions, additions, or deletions shall be included.

### 460.17: Severability Clause

If any article, section, subsection, clause, or phrase of 103 CMR 460.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner, or otherwise inoperative, such decisions shall not affect the validity of any other article, section, subsection, sentence, clause, phrase of 103 CMR 460.00.

## REGULATORY AUTHORITY

103 CMR 460.00: M.G.L. c. 123A, §§ 2 and 2A; c. 124, § 1(c), (f) and (q) and c. 127, §§ 20, 49A, 97 and 97A.